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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

VIRGINIA IRON, COAL & COKE CO. v. STANBERRY.

Sept. 9, 1915.

[86 S. E. 130.]

1. Trial (§ 156*)—Demurrer to Evidence—Conflicting Evidence—Effect.—Where conflicting evidence presents a question for the jury, on demurrer to the evidence the question must be decided in favor of the demurree.

[Ed. Note.—For other cases, see Trial, Cent. Dig. 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 477.]

2. Master and Servant (§ 288, 289*)—Injuries to Servant—Contributory Negligence and Assumption of Risk—Question for Jury.—In a miner's action for injuries received while bonding a track, by being struck by a trip of cars negligently operated by a fellow servant, incompetent to the knowledge of both master and injured servant, question whether such servant was guilty of contributory negligence, or had assumed the risk of injury, held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1068-1090, 1092-1132; Dec. Dig. § 288, 289.* 9 Va.-W. Va. Enc. Dig. 726.]

Error to Circuit Court, Wise County..

Action by T. C. Stanberry against the Virginia Iron, Coal & Coke Company. Judgment for plaintiff, and defendant brings error. Affirmed.

F. A. Groseclose, D. D. Hull, Jr., of Roanoke, Bullitt & Chalkley, of Big Stone Gap, and Jackson & Henson, of Roanoke, for plaintiff in error.

W. H. Werth, of Tazewell, for defendant in error.

VIRGINIA & S. W. Ry. Co. v. SKINNER.

SAME v. HARRIS.

Sept. 9, 1915.

[86 S. E. 132.]

1. Trial (§ 253*)—Instructions—Ignoring Issues—Contributory Negligence.—An instruction, in a railroad crossing collision case,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

directing verdict for plaintiff on a finding of negligence of defendant, is erroneous in ignoring contributory negligence, relied on as a defense, there being evidence of it and of its continuance up to the accident.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 613-623; Dec. Dig. § 253.* 7 Va.-W. Va. Enc. Dig. 715.]

2. Trial (§ 296*)—Instructions—Cure by Other Instructions.—The defect of an instruction in directing verdict for plaintiff on a finding of negligence, ignoring the defense of contributory negligence, is not cured by other instructions as to contributory negligence; it being a case of contradictory instructions.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 744.]

3. Appeal and Error (§ 1122*)—Reversal for Instructions—Considering Weight of Evidence.—On reversal for error in instructions, expression of opinion on the weight of evidence will be withheld, where it is conflicting and there must be a new trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4420; Dec. Dig. § 1122.* 1 Va.-W. Va. Enc. Dig. 600.]

Error to Circuit Court, Wise County.

Two actions, one by D. H. Skinner, the other by Charles Harris, both against the Virginia & Southwestern Railway Company. Judgments for plaintiffs, and defendant brings error. Reversed, and remanded for new trial.

Powell, Price & Shelton, of Bristol, and *Bullitt & Chalkley*, of Big Stone Gap, for plaintiff in error.

Vicars & Peery, of Wise, and *Morton & Parker*, of Appalachia, for defendants in error.

WITT *v.* CREASEY.

Sept. 9, 1915.

[86 S. E. 128.]

1. Easements (§ 5*)—Right of Way—Prescription.—To establish a private way by prescription over the land of another, the use and enjoyment thereof by claimant must have been adverse, under a claim of right and exclusive, continuous, uninterrupted, and with the knowledge and acquiescence of the owner of the land, for at least 20 years.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 13, 20-22, 26; Dec. Dig. § 5.* 11 Va.-W. Va. Enc. Dig. 310.]

2. Witnesses (§ 138*)—Competency—Transaction with Decedent.—In an action to establish a private way by prescription, a former

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.